

OGC Has Reviewed

7 August 1947

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MEMORANDUM FOR THE FILES

Subject: Employment of Retired Foreign Service
Officers -- Brunswick v. United States

1. Reference is made to the memorandum to the files of 30 June 1947 reporting the case of Brunswick v. United States. This office was recently consulted on the case of [REDACTED] Foreign Service Officer retired at his own request prior to retirement for longevity who is being considered for permanent employment by CIG.

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2. While it appeared that the Brunswick case was clear in ruling that retired pay under Foreign Service annuity provisions was not salary under the Dual Compensation laws, that case specifically applies to temporary appointments only. Therefore, further check was made with State Department for the current status of such employment. The matter was discussed with Mrs. Straney (State - Extension 443) and with Mr. Lay, a legal advisor to the Office of Foreign Service, on State - Extension 3667. Also familiar with the matter is Mr. Day in the Foreign Service Finance Office on the Annuity Desk (State - Extension 748).

3. It appears that State Department and Foreign Service had considered the Brunswick case definitive on all questions of employment of retired Foreign Service Officers and, until recently, had no reason to question this theory. Mr. Lay stated, however, that while he entered his office after the Brunswick case he had from time to time come across decisions of the Comptroller General which did not seem to be strictly in accordance with that case. Very recently, the General Accounting Office began suspending payment of all annuities to retired officers holding civilian positions with the Government. State first questioned the Comptroller General's Office informally, and was told that so far as the General Accounting Office was concerned they considered the Brunswick case binding on that office only on payments to Mr. Brunswick and not as a precedent for payments to any other Foreign Service Officers, even though they might be in a situation identical to that of the Brunswick case. Formal inquiry by State brought a written response with the same general conclusion to Mr. Day in the Finance Office.

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4. The theory appears to be that the Court and the Comptroller General differ in their interpretation of the Dual Compensation laws and their application. The Comptroller, as representative of the Legislative Branch, does not feel himself bound by the Court interpretation except on the immediate facts presented to the Court for decision. Inasmuch as the Comptroller's rulings are final to certifying officers, the Comptroller's decision is, in effect, binding on the Executive Branch. The practical result in the opinion of the above-mentioned State Department representatives is that any retired Foreign Service Officer employed by the Federal Government will have his annuity payments suspended unless and until he carries his claim through the Court of Claims and wins a favorable decision on the basis of the Brunswick case.

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LRH:mbt